

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
CLERK

IN THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint of)	
)	
AMANDA KNIGHT,)	NO. 99755-1
)	
Petitioner.)	PERSONAL RESTRAINT PETITION
_____)	

A. STATUS OF PETITIONER

1. Petitioner Amanda Knight is confined in the Washington Corrections Center for Women at Purdy, serving sentences imposed by the Pierce County Superior Court.
2. Petitioner was convicted of the crimes of first degree felony murder, two counts of first degree robbery, two counts of second degree assault, and one count of first degree burglary.
3. Petitioner was sentenced after trial. The judge who imposed sentence was the Hon. Rosanne Buckner. The sentence was imposed on May 13, 2011.
4. Petitioner's lawyer at trial was Harry Steinmetz.
5. Petitioner did appeal the decision of the trial court to Division II of the Court of Appeals, which affirmed her convictions and sentences. *State v. Knight*, 176 Wn. App. 936, 309 P.3d 776 (2013), *review denied*, 179 Wn.2d 1021, 318 P.3d 279 (2014). Her lawyers on appeal were Mitch Harrison & John Crowley.
6. Following the affirmance on appeal, Petitioner filed a Personal Restraint Petition in the Court of Appeals, Division II, in which she claimed that two of her convictions and

sentences were imposed in violation of her right to be free from Double Jeopardy. The Petition initially was denied, but on reconsideration it was granted in part and denied in part. *In re Knight*, 7 Wn.App.2d 1076 (No. 49337-3-II (March 14, 2019) (Appendix B). This Court granted discretionary review, and by a 5-4 vote held that the Petition should be denied in all respects. *Matter of Knight*, 196 Wn. 2d 330, 473 P.3d 663 (2020) (Appendix A). Reconsideration of that decision was denied over objection, on February 2, 2021. (Appendix C). Petitioner's lawyers in this postconviction proceeding were David Zuckerman, Lenell Nussbaum and Timothy Ford.

B. GROUNDS FOR RELIEF

Petitioner's conviction of the felony murder of James Sanders should be vacated because the evidence adduced at trial is insufficient to support that conviction, as it has been authoritatively construed by this Court.

1. Facts supporting claim.

The recent opinion of this Court rejecting Petitioner's Double Jeopardy claims summarized the facts and history of this case as follows:

In April 2010, James and Charlene Sanders posted an advertisement on Craigslist, seeking to sell a wedding ring. On the evening of April 28, after informing the Sanderses they were interested in purchasing the ring, Amanda Knight and three other men arrived at the Sanderses' residence. James invited Knight and one other man into the kitchen where Charlene soon joined them. Just as the transaction was seemingly about to be completed, Knight's accomplice drew a gun and pointed it at the Sanderses. While holding James and Charlene at gunpoint, Knight and her accomplice zip-tied the couple, placed them face down on the floor, and took their wedding rings off their fingers.

After Knight and her accomplice stole the Sanderses' rings, Knight's two remaining accomplices entered the Sanderses' house, went upstairs, and brought the Sanderses' two children downstairs at gunpoint. Both children were then zip-tied and one of them was pistol-whipped in the head. As Knight proceeded to ransack the rest of the house, Knight's accomplices demanded that Charlene tell them the location of their safe. When she denied owning a safe, they kicked her in the head and once again held her at gunpoint.

The Sanderses then admitted to owning a safe, and James agreed to provide Knight's accomplices with the combination. At that point, James was pulled off the floor and his zip tie was loosened. James then broke free of his restraints and jumped on one of the accomplices. James was attacked and pistol-whipped in the head before he was fatally shot three times. After James was shot, Knight and her accomplices fled. The police declared James dead at the scene.

A week later, Knight turned herself in and confessed. The police charged Knight with one count of first degree murder while in the furtherance of a robbery (i.e., felony murder), two counts of first degree robbery, two counts of second degree assault, and one count of first degree burglary, all with firearm enhancements. At trial, the jury was presented with 45 jury instructions, one of which stated that "[a] person commits the crime of Murder in the First Degree when she or an accomplice commits Robbery in the First Degree and in the course of or in furtherance of such crime she or another participant causes the death of a person other than one of the participants." Clerk's Papers at 335. In April 2011, the jury found Knight guilty on all counts, and the trial court sentenced Knight to 860 months in prison.

Knight appealed, arguing that her robbery and assault convictions against Charlene Sanders merge and that her separate sentences violate double jeopardy. *State v. Knight*, 176 Wn. App. 936, 940-41, 309 P.3d 776 (2013). The Court of Appeals disagreed and dismissed Knight's appeal. *Id.* at 951, 956, 309 P.3d 776.

In July 2016, Knight filed a PRP with the Court of Appeals, relitigating her claim that her assault and robbery convictions of Charlene Sanders merge and raising a new claim that her convictions for the robbery and felony murder of James Sanders merge as well. The Court of Appeals first denied Knight relief, but Knight filed a motion for reconsideration; the Court of Appeals subsequently held that Knight's felony murder conviction merged with her robbery conviction against James Sanders, but that Knight's claim regarding her robbery conviction and assault conviction against Charlene Sanders was barred from review.

Both parties filed motions for discretionary review, which we[re] granted.

Matter of Knight, 196 Wn. 2d at 333-35 (App. A at 2-5) (footnotes omitted)¹.

The Court rejected both of Petitioner's Double Jeopardy challenges. With respect to the challenge to the convictions and sentences for the felony murder and first degree robbery of

¹ Petitioner respectfully disagrees with several aspects of the Court's summary of the evidence, but recognizes it is authoritative and accepts it for purposes of this Petition.

James Sanders, it did so based on the conclusion that Mr. Sanders was subjected to two separate robberies, one of his ring and one of the safe in his garage, and that his murder was committed in the course of this second robbery of the safe, after the robbery of his ring was complete.

The Court wrote:

James was pulled up from the floor and had his zip tie loosened in order to guide Knight's accomplices *to the safe—a separate robbery*. In the middle of this new robbery, James attacked Knight's accomplices, who then killed James—completing Knight's felony murder charge, as *James' murder was in furtherance of a second, distinct robbery*. Based on the chronology of these events, James' “person or property” was injured “in a separate and distinct manner” when he was robbed of his ring, and then injured “in a separate and distinct manner” when *he was shot in furtherance of Knight's accomplices robbing the Sanderses of their safe*. Arndt, 194 Wn.2d at 819, 453 P.3d 696 (quoting Harris, 167 Wn. App. at 355, 272 P.3d 299). Knight's convictions against James Sanders had “independent effects” from each other and thus do not violate double jeopardy.

196 Wn. 2d at 338–39 (App. A 9) (emphasis added).

The State, concededly, was unclear when discussing the felony murder count and which robbery applied to that count; however, before listing such counts, the State sequenced each of the acts Knight and her accomplices performed, clearly showing that the robbery of the ring was complete before Knight's accomplices engaged in *another robbery of the Sanderses' safe and the subsequent murder of James Sanders*.

196 Wn. 2d at 340 (App. A 11) (emphasis added).

This theory of the case differed from what the prosecution argued at trial. When the State attempted to raise it in a supplemental brief in the Court of Appeals, opposing Petitioner's Personal Restrain Petition, that Court pointed this out:

The State's supplemental briefing argues, “There is ample evidence in the record to support the State's theory that the felony murder occurred based on the robbery of the safe and not of the rings, giving an independent purpose to each robbery.” Suppl. Br. of Resp't at 3. The State never argued this theory at trial, and the theory is contrary to the jury instructions. In addition, the State could not have argued this theory because *there was only an attempted robbery of the safe. The State only charged and alleged a completed robbery, not an attempted robbery*.

In re Knight, (Appendix B) at 11n.6 (emphasis added).

The State did not revive this argument in its briefing to this Court on review of that decision; instead, it argued that “the robbery and robbery murder of James Sanders had the independent effect of endangering each family member's life and property,” and “[t]he felony murder involved a separate and distinct use of force, independent from the robbery,” and “[t]he crimes of robbery and felony murder serve an independent purpose.” Supplemental Brief of Respondent, *Matter of Knight*, Wn. Sup. Ct. No. 97066 at 10-17 (Appendix D). No member of the Court accepted these arguments.

As the Court of Appeals’ unpublished opinion indicates, there is no evidence of a completed theft of or from a safe at the Sanders home. Yet the instructions to the jury required proof of a completed robbery to convict of felony murder:

With regard to James Sanders, they told the jury (in relevant part):

To convict ... of Murder in the First Degree as charged in Count I, ... the following elements must be proved:

- (1) That on or about April 28, 2010, the defendant or an accomplice *committed Robbery in the First Degree*;
- (2) That the defendant or an accomplice caused the death of James Sanders, Sr. in the course of or in furtherance of *such crime*; [and]
- (2) That James Sanders, Sr. was not a participant in the crime of Robbery in the First Degree ...

Appendix F (CP 336, Instruction 9) (emphasis added).

A person commits the crime of Robbery when she or an accomplice unlawfully and with intent to commit theft thereof *takes* personal property from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person or to the person or property of anyone.... The *taking* constitutes robbery, even if death precedes the taking, whenever the taking and a homicide are part of the same transaction.

Appendix F (CP 338 Instruction 11) (emphasis added).

This Court's holding that Petitioner's felony murder conviction is based solely on an alleged completed robbery of James Sanders' safe renders the evidence supporting that conviction is insufficient to support the verdict. There was and is no evidence that any robbery of the safe was completed. The safe was not taken from the Sanders or from their house, and there was and is no evidence that anything was taken from the safe. The trial evidence indicated that the safe was neither opened nor removed during the robbery: it was there when the police inspected the house after the robbery, and when the safe was inspected by police it had only James Sanders' fingerprints on it. See RP 641, 684-85, 727.

2. Argument

The Sixth Amendment to the United States Constitution guarantees criminal defendants "a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *Apprendi v. New Jersey*, 530 U.S. 466, 476-77, 120 S. Ct. 2348, 147 L.Ed. 2d 435 (2000)³ (quoting *United States v. Gaudin*, 515 U.S. 506, 510, 115 S. Ct. 2310, 132 L.Ed. 2d 444 (1995)).

The constitutional standard for reviewing the sufficiency of the evidence in a criminal case is "whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Bingham*, 105 Wn. 2d 820, 823, 719 P.2d 109 (1986) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) and citing *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)).

Combined, these constitutional principles require proof beyond a reasonable doubt of all the elements of an offense on which the jury was instructed. The "'law of the case' doctrine ... requires the State to prove every element in the to-convict instruction beyond a reasonable

doubt.” *State v. Johnson*, 188 Wn.2d 742, 762, 399 P.3d 507 (2017). “[J]ury instructions not objected to become the law of the case.” *State v. Hickman*, 135 Wn.2d 97, 102, 954 P.2d 900 (1998). The State ““assumes the burden of proving otherwise unnecessary elements of the offense when such added elements are included without objection in the to convict instruction.”” *State v. Dreewes*, 192 Wn.2d 812, 821, 432 P.3d 795, 800 (2019) (internal quotation marks omitted) (quoting *Hickman*, 135 Wn.2d at 102).

In criminal cases, the State assumes the burden of proving otherwise unnecessary elements of the offense when such added elements are included without objection in the “to convict” instruction. *State v. Lee*, 128 Wn.2d 151, 159, 904 P.2d 1143 (1995) (“Added elements become the law of the case ... when they are included in instructions to the jury.”) (citing *State v. Hobbs*, 71 Wn.App. 419, 423, 859 P.2d 73 (1993); *State v. Rivas*, 49 Wn.App. 677, 683, 746 P.2d 312 (1987)). See also *State v. Barringer*, 32 Wn.App. 882, 887-88, 650 P.2d 1129 (1982) (“Although the charging statute ... did not require reference to [the added element], by including that reference in the information and in the instructions, it became the law of the case and the State had the burden of proving it.”) (citing *State v. Worland*, 20 Wn.App. 559, 565-66, 582 P.2d 539 (1978)), overruled in part on other grounds by *State v. Monson*, 113 Wn.2d 833, 849-50, 784 P.2d 485 (1989).

On appeal, a defendant may assign error to elements added under the law of the case doctrine. *State v. Ng*, 110 Wn.2d 32, 39, 750 P.2d 632 (1988) (because the State failed to object to the jury instructions they “are the law of the case and we will consider error predicated on them.” (citations omitted)). Such assignment of error may include a challenge to the sufficiency of evidence of the added element. *Barringer*, 32 Wn.App. at 887-88, 650 P.2d 1129; *Schatz v. Heimbigner*, 82 Wn. 589, 590, 144 P. 901 (1914).

State v. Hickman, 135 Wn. 2d 97, 102, 954 P.2d 900 (1998).

In this case, the jury instructions on the elements of felony murder and the definition of robbery were proposed by the prosecution and given without objection. See Appendix G (State’s Proposed Instructions 10, 13, 14). The State thereby assumed the burden of proving that petitioner or an accomplice “committed Robbery in the First Degree” and killed James Sanders occurred in the “course or furtherance of such crime.” Appendix F, Instruction 9. This Court’s majority decision reflected this: it said the violence against James Sanders over the safe

was “a separate *robbery*,” a “new *robbery*,” “a second, distinct *robbery*,” “*robbing* the Sanderses of their safe,” a “‘separate forcible *taking*[] of property.’” Appendix A at 9, 10, 11 (emphasis added). However, as noted above, it is undisputed and indisputable that there was no “robbery” of the Sanders’ safe: the safe was never “take[n]” and nothing was “take[n]” from it. See RP 641, 727.

Because of this, petitioner’s felony murder conviction, as rendered by this Court’s recent decision rejecting her Fifth Amendment Double Jeopardy challenge, can no longer be squared with the Sixth Amendment’s requirement that a criminal convictions rest on jury verdicts based on proof beyond a reasonable doubt of each element of the crime. No rational trier of fact could find beyond a reasonable doubt that James Sanders was murdered in the course of a completed robbery of his safe; and the jury was not asked to determine whether the killing occurred in the course of an attempted robbery of the safe, or anything else. The evidence introduced at trial was insufficient to support the felony murder conviction the jury returned, as this Court has authoritatively construed it.

RCW 10.73.100(4) exempts from the statutory time limits on personal restraint petitions those that raise a claim that “defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction.” RCW 10.73.100(6) exempts claims based on “a significant change in the law, whether substantive or procedural, which is material to [a] conviction” and retroactive. This Court’s decision rejecting petitioner’s Double Jeopardy claim significantly changed the legal basis for her felony murder conviction, and the Court applied that “changed legal standard” to her case. *Id.* This Petition is timely, for both those reasons.

C. STATEMENT OF FINANCES

1. Petitioner does X does not ___ ask the court to file this without making him pay the filing fee because she is so poor she cannot pay the fee.

2. Petitioner has a spendable balance of \$ 25 in her prison or institution account.

3. Petitioner does X does not ___ ask the court to appoint a lawyer for her because she is so poor she cannot afford to pay a lawyer.

4. Petitioner is ___ is not X employed.

5. During the past 12 months Petitioner did ___ did not X get any money from a business, profession or other form of self employment.

6. During the past 12 months, Petitioner

did did not

___ X get any rent payments.

___ X get any interest.

___ X get any dividends.

___ X get any other money.

If so, the amount of money I got was \$ _____ about every other month.

7. Petitioner

does does not

___ X have any cash except as said in answer 2.

If so, the total amount of cash he has is about \$ _____.

___ X have any savings accounts or checking accounts.

___ X own stocks, bonds, or notes.

8. All real estate and other property or things of value which belong to Petitioner

Items

Value

None

9. Petitioner is ___ is not X married.

10. All of the persons who need me to support them are listed here.

Name and Address	Relationship	Age
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None

11. All the bills Petitioner owes are listed here.

Name of creditor	Address	Amount
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Restitution in this case

D. REQUESTS FOR RELIEF

WHEREFORE, Petitioner prays that the Court:

1. Permit her to proceed in forma pauperis without prepayment of costs and fees;
2. Appoint counsel to represent her in this Court;
3. Grant her leave to submit briefs and argument in support of this Petition;
4. Order a reference hearing on any facts alleged in this Petition that are disputed by

the Respondent State of Washington;

5. Discharge Petitioner from her unconstitutional conviction and sentence of first degree murder;

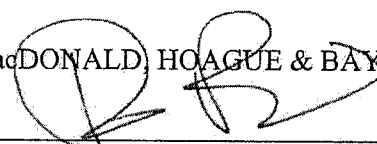
6. Grant such other and further relief as may be appropriate under the circumstances.

E. CONCLUSION

Petitioner respectfully requests that her petition be granted and her conviction and sentence for first degree murder vacated.

DATED this 4 day of May, 2021.

MacDONALD, HOAGUE & BAYLESS

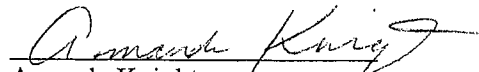


Timothy K. Ford, WSBA #5986
Attorney for Petitioner

VERIFICATION

I, AMANDA KNIGHT, do hereby declare under penalty of perjury under Washington State law, that I have read the foregoing Personal Restraint Petition, including the Statement of Finances, I know the contents thereof and believe them to be true to the best of my own knowledge and belief.

DATED this 4 day of May 2021, at Gig Harbor, Washington.


Amanda Knight

APPENDIX A